HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
and
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

W.A. NO.758 OF 2006

Between:
Smt.Dodla Laxmamma

..... Appellant

AND

The Mandal Revenue Officer,
Ghatkesar Mandal, Ranga Reddy District.

.....Respondent

::JUDGMENT::

Counsel for the Appellant : Sri Thirumala Rao

Counsel for Respondent : Government Pleader for Revenue

Dated 11/7/2006

Per Sri G.S.Singhvi, CJ

This appeal is directed against order dated 2.6.2006 passed by the learned Single Judge whereby he dismissed the writ petition filed by the appellants questioning the legality of order dated 20.5.2005 passed by Mandal Revenue Officer, Ghatkesar Mandal, Ranga Reddy District for cancellation of the assignment of land measuring Ac.19.09 guntas comprised in survey No.378 of Pratapasingaram Village.

The appellants claim to be the owners in possession of land measuring Ac.2-07 gts. and Ac. 2-00 respectively comprised in Survey No. 378/C situated at Pratapasingaram Village, Ghatkesar Mandal, Ranga Reddy District. They claim to have purchased the land vide registered sale deeds dated 5-2-1994 by paying Rs.80,000/- each. They filed Writ Petition No. 3769 of 2006 with the complaint that the respondents were seeking to dispossess them without following the procedure established by law. At the hearing of that petition, learned Government Pleader made a statement that the land in question had already been resumed by the Mandal Revenue Officer vide his order dated 20-5-2005 by invoking the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short 'the Act') read with the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Rules, 1977 (for short 'the Rules'). Thereupon, the petitioners obtained copy of order dated 20-5-2005 passed by the Mandal Revenue Officer and filed Writ Petition No. 12347 of 2006 for quashing that order by contending that the same is vitiated due to violation of the rules of natural justice. In paragraph 5 of the affidavit filed by petitioner No.1 Smt Dodla Laxmamma, it was averred that before passing order dated 20-5-2005, the Mandal Revenue Officer did not give any notice to them and they were not afforded opportunity to participate in the enquiry.

The learned Single Judge dismissed the writ petition by observing that the case involves adjudication of questions of fact and an alternative remedy of appeal is available to the petitioners (appellants

herein) under Section 4 A of the Act.

The principal ground on which the appellants have assailed the order under challenge is that the learned Single Judge seriously erred in non-suiting them without properly appreciating their plea that order dated 20.5.2005 was passed in violation of the rules of natural justice.

We have heard Sri Thirumala Rao, Advocate for the appellants and learned Government Pleader for Revenue and perused the record. In our opinion, the order under appeal is liable to be set aside because the view taken by the learned Single Judge on the maintainability of the writ petition suffers from an error apparent.

The plain language of Article 226 does not, in terms, contain any restriction on the High Court's power to issue directions or orders or writs including the writs of Habeas Corpus, Mandamus, Certiorari, Prohibition or quo-warranto, but in last 56 years, the Courts have evolved several rules of self-imposed restraint including the one that the High Court will not entertain a petition if an effective alternative remedy is available to the petitioner. This rule is subject to few well recognised exceptions. One of the exceptions is where the impugned order is challenged on the ground of violation of rules of natural justice. Reference in this connection can be made to the judgments of the Supreme Court in **Baburam v. Zilla Parishad**[1] and **Harbanslal Sahnia v. Indian Oil Corporation Limited**[2].

Reverting to the case in hand, we find that the main ground on which the appellants have challenged order dated 20-5-2005 is that the same is vitiated due to violation of rules of natural justice. In her affidavit, appellant No.1 categorically averred that before passing the order adversely affecting their rights, the Mandal Revenue Officer did not give them notice and opportunity of hearing. She further averred that affixation of notice on the notice board of the Gram Panchayat could not be equated with service of notice on the affected persons. The learned Single Judge did not call upon the respondent to file counter affidavit.

Therefore, there was no occasion for him to discard the averment contained in the affidavit regarding non-service of notice issued by the Mandal Revenue Officer and dismissed the writ petition on the ground of availability of alternative remedy.

In our considered view, the cases in which the petitioner comes up with the prayer for quashing an administrative action or quasi judicial order on the ground of violation of rules of natural justice, the Court should ordinarily call upon the respondents to file counter affidavit to ascertain the correctness or otherwise of the petitioner's assertion. If the Court comes to the conclusion that the petitioner was not given opportunity of hearing before taking of adverse action or passing of adverse order, then it is always apposite to invalidate such an action or order on the ground of violation of the rule of audi alteram partem with liberty to the concerned authority/officer to take fresh action or pass fresh order. In such cases, the petitioner cannot be relegated to the alternative remedy of appeal.

In view of the above discussion, we would have set aside the order of the learned Single Judge and remanded the case for fresh adjudication of the writ petition but having perused order dated 20.5.2005 passed by the Mandal Revenue Officer, which was subject matter of challenge in the writ petition and Rule 3 of the Rules, we are convinced that the order of resumption is vitiated due to violation of the rule of audi alteram partem and, therefore, it will be in the interest of justice to quash that order, in so far as it relates to the land of the appellants with a direction to the Mandal Revenue Officer to pass fresh order after hearing the petitioners.

In the result, the appeal is allowed. Order dated 22.6.2006 passed by the learned Single Judge is set aside. As a sequel to this, Writ Petition No.12347 of 2006 is allowed and order dated 20.5.2005 passed by Mandal Revenue Officer, Ghatkesar Mandal, Ranga Reddy District is quashed. However, liberty is given to the officer concerned to pass fresh order after hearing the petitioners.

The petitioners are directed to appear before the Mandal Revenue Officer on 14.8.2006. The officer concerned is expected to pass fresh order as early as possible but latest within a period of three months from the date of receipt of a copy of this order.

G.S.SINGHVI, CJ

Dt.11.7.06

G.V.SEETHAPATHY, J

svs

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[1] AIR 1969 SC 556

[2] (2003) 2 SCC 107